EXHIBIT 18

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

MICROSOFT CORPORATION, a Washington corporation, Plaintiff, v. MOTOROLA, INC., MOTOROLA MOBILITY, INC., and GENERAL INSTRUMENT CORPORATION, Defendants.	)	CASE NO. C10-1823JLR SEATTLE, WASHINGTON May 18, 2011 MOTION HEARING
MOTOROLA, INC., MOTOROLA MOBILITY, INC., and GENERAL INSTRUMENT CORPORATION, Plaintiffs, v. MICROSOFT CORPORATION, a Washington corporation, Defendant.	)	CASE NO. C11-00343JLR

VERBATIM REPORT OF PROCEEDINGS
BEFORE THE HONORABLE JAMES L. ROBART
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For Microsoft: ARTHUR HARRIGAN

For Motorola: JESSE JENNER

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THE COURT: Go ahead. Obviously, it influences the court's analysis.

MR. JENNER: Right. I think it's good background. I think, as a generality, what we're talking about here are matters that have arisen over the last, oh, maybe 20 years in the nature of standardization of products and processes.

It has become important for manufacturers and service providers to be able to provide their products and services consistently so that consumers can have various products interact with each other and not find they've taken something home that won't work with somebody else's product. Just one example of that would be digital video disks.

Standards are needed for the disks and for the players so that if a consumer buys a DVD and puts it in a particular player, it will work in that player, just as in other players, and so that all these devices will be interactive. And the way you get there is by competent engineers and scientists getting together and developing a set of technological requirements for these kinds of products so that if everybody conforms to the requirements that is practiced as the standard, then all of their products will be interactive, the consumer will benefit by being able to go to any source for the product, and there will be a general benefit for this.

What we're dealing with here are two of these standards.

One of these standards is the so-called 802.11 standard that we will refer to, and that's basically a wireless communications standard that's promulgated by representatives coming together at the IEEE, the Institute of Electrical and Electronics Engineers. These enable things like laptop computers and cell phones and those kind of devices to communicate wirelessly; for example, when we out-of-towners go to our favorite Starbucks, we can connect through the wireless connections, and we know, because of the standardization, our devices will talk to other people's devices.

The other standard is the so-called H.264 standard, which is promulgated by the International Telecommunications Union, or ITU as we refer to it. It is a video encoding standard that enables users to watch the same video on whatever device that they may happen to have, be it the handheld or a laptop, that has become compatible with the H.264 standard. So these are standards that have been developed over the years, and they're are the ones that we're playing with here.

Companies who developed proprietary technology are able to get patents on portions of what is used in the standard. This could create problems if people have patents on the standard and they don't make them available on so-called reasonable and nondiscriminatory terms, R-A-N-D, or RAND. You'll hear a lot about RAND.

So these standards organizations, or SDOs, have variable requirements, they do it in different ways. But, in essence, they require some sort of an assurance from members of the organization that if they get a patent on a portion of the standard, they will either license it free, if that's what their intention is, or they will license it on RAND terms.

All the standards have different languages. To the extent that we're talking about a breach of contract action here, which we are, as I will come to in a moment, it's important to look at the actual language in order to understand what it is.

So letters of assurances were required, they were provided, in this instance by Motorola for Motorola's products that are consistent with the requirements of the standards body.

So I submit, Your Honor, and I think your question goes to this, in part, what the actual obligation is and how it is satisfied varies from one standards organization to another. We have to look at what it is here that was undertaken in order to understand what we're dealing with.

So in order to do that, I would like to show Your Honor relevant language, which I think you'll see deviates from what we submit Microsoft has been arguing about. If Your Honor would take the little slide book that I gave you out. The two that are relevant to understanding what the

obligations are, are Slide 3, which is the policy excerpt for the IEEE having to do with 802.11, and Slide 4, which are from the ITU's guidelines that have to do here with H.264.

And just to give you a preview: To the extent that there is or has been a suggestion that Motorola was required to offer a precise RAND rate and royalty base, the absolute exact prevailing RAND rate, that is not what either of these bodies call for.

If you look at Slide 3, the first sentence states, "Not that a precise RAND rate is going to be offered from the outset," which I submit to Your Honor is impossible to figure out. It varies, and every situation is going to be different. But it says, "A license will be made available to an unrestricted number of applicants on RAND terms." "A license will be made available." And then it goes on at the bottom, and it says, "The IEEE is not responsible for determining whether any of the terms or conditions are, in fact, RAND terms and conditions."

And it's implicit, I submit, in that that it is up to the parties to come to an agreement, if they can, on whether or not the actual, final license terms are RAND terms. So you have to get there, and the only other way you can possibly get there is by negotiating.

This is even more explicit in Slide 4, because the ITU, in Slide 4, calls this right out. In Slide 4, in the lower box,

No. 2: "The requirement is that the patent holder is prepared to grant a license to applicants on RAND terms."

Not again that you must come forward, having somehow figured out what the precise correct RAND term is, but that you're prepared to grant a license. And this union, ITU, tells you how to get there, because it goes on to say in the second sentence, "Negotiations are left to the parties' concern and are performed outside the ITU." And the Annex No. 1 at the top says the same thing: "The detailed arrangements arising from patents, licensing royalties, et cetera, are left to the parties' concerns, as these arrangements might differ from case to case."

So the ITU makes it absolutely explicit that the way you get to the license that is to be provided is by negotiating. Everybody knows that. And just to show you a couple of examples, I've attached, at Tab 5, a couple of excerpts from the American Bar Associations' committee on standardization. And it says, in the first box at page 49, in the yellow highlighting, "It's reasonable to require that licenses be granted only upon request by a potential licensee."

And by the way, Microsoft never even requested a license. To this day, they haven't said they'll take one. But in any event, it says, "Upon the conclusion of bilateral negotiations." So the ADA's committee on standardization also recognizes that the way you get there, consistent with

common sense, is by negotiations.

And finally, at Slide 7, we have brought in as a learned publication, it didn't appear in a law review, it was delivered orally, slides by Ms. Marasco, who is Microsoft's own general manager for standard strategy. In the lower box, she, too, acknowledges that, "A prospective implementer that has requested a license will negotiate on a private bilateral basis with the patent owner to determine whether they can arrive at a mutually acceptable agreement on RAND terms." So Microsoft's own general manager knows it.

The only way you can possibly deal with what are appropriate RAND terms in any given setting is by negotiating, and that didn't happen here.

Why does that even make sense? It makes sense because we don't know what a RAND rate is in any given situation, but the actual RAND rate at the end of the day may be a high rate for a high user of technology that had nothing to give back in a cross-license. It may be a lower rate, where the user is a moderate user and has a lot of its own technology to give back as a result of the negotiations.

The only way you can get there is by engaging, and if you never engage, you never get the process going, which we submit, Your Honor, is noncompliance with the standards.

Why does that matter? Because even though Microsoft says at page 2 of its brief that it was under no obligation to

negotiate, the fact of the matter is, you can see from the standard that they were under an obligation to negotiate.

The contract is the entirety of the standards bodies rules that govern this. The ITU makes it plain explicit that the parties are to negotiate. And Microsoft, if it wants to claim to be a third-party beneficiary, which it does, is obligated to comply with the very contract of which it claims to be the third-party beneficiary. And this is true of these standards, it's true of all standards. This is the way people deal with them. They negotiate.

So you have a policy, you have requirements for negotiation, you have the common sense, which the *Iqbal* case I will come to in a while calls for, in which we are all called upon to apply our common sense to whether or not a pleading states a plausible cause of action. Common sense even says you have to engage in negotiation.

Microsoft, in its brief, says we're not dealers at a rug bazaar. I don't like to think of it as a rug bazaar. I guess that's okay. But think of it as a car situation where you walk into somebody down the street who says, "I've got a car I will sell you. It's a Prius. It's pretty good on fuel economy. I'll give it to you for $100,000." You can walk away, if you choose to, in which case we don't know what the right is for a Prius. Or you can engage and say, "That's ridiculous. Your Prius isn't worth $100,000. I'll give you

$30,000 for it." And then you get into an engagement, and you might get comparable to a RAND term. You might get the actual price of the car and reach an agreement.

On the other hand, in the RAND negotiations setting it is possible, you will get the impasse, and the court may have to intervene. You've seen cases where courts were prepared to intervene in setting a RAND rate, but it never came to that, it was always settled.

The point is, you don't get to that situation unless you engage and negotiate the way the standards require, and verbatim in the standards. It's part of the contract. And that's why I say, as a matter of understanding the legal basis for -- under which Microsoft needs to negotiate, I submit, Your Honor, it is in the agreements themselves as a whole, as recognized by people like the ABA and Microsoft's own standards manager. So that is the basis on which we say that there has to be a negotiation.

Now, here, Microsoft simply never engaged and never negotiated. This is unlike all the other authorities on which Microsoft relies in its briefs, and that's why they're distinguishable. The *Wi-Lan case, the RIM* case, these cases that you saw in Microsoft's briefs all involved negotiations that came to an impasse. Well, if negotiations came to an impasse, then I'd submit to Your Honor that it's appropriate at impasse for someone to consider invoking the court, but

that should only be after the negotiations have failed and the parties can no longer make any progress.

Why? Because no court has ever set a RAND rate. I don't mean to suggest for a second that the court can't do that. The court can do that. But it is a novel process, there's no meaningful guidance for it, it is basically setting sail on an uncharted sea. The only body that has ever tried to actually determine a RAND rate was the Federal Trade Commission in part of its RAND investigation, where it spent 55 months, 55 months conducting the entirety of the proceedings that resulted partially in a so-called RAND rate.

This is the multipage copy of 80,000 words worth of what the Federal Trade Commission came up with, and then it was duly thrown out by the D.C. circuit.

So I submit to Your Honor that while the court certainly can be the pioneer that goes off and tries to determine what it is that ought to be considered in setting a RAND rate, that should only be done on a record of bilateral negotiations, the way that happened in other every other case that the parties have referred to, and you shouldn't be required by Microsoft to put yourself in the position of a rate-making proceeding, an agency, essentially, conducting a rate-making proceeding that will go on for a considerable period of time on a basis which we've not yet determined.

I know Microsoft says it's an easy thing to do,

straightforward. They've proposed a short schedule for doing it. I don't know how anybody can suggest that. We're going to have to consider unknown factors. Some of the factors could be, if we're going to value Motorola's H.264 portfolio, who else has an H.264 portfolio? How many portfolios are there? How valuable is each one? How can you assess that without looking at the patents in each portfolio and figuring out what they're worth in order to figure out proportionally who gets what share of some proposed total royalty package, if that's the way you're going to approach it? I don't know how you're going to approach it.

But what I'm suggesting is that if you have to go through a process in which, among other things, you have to value the standards essential patent portfolios, that is much more than a single patent infringement proceeding; whereas my patent or my five patents against the products that are said to infringe the way courts have done thousands of times in the past, you're asking to set forth, as I said, on uncharted sea, and I submit if there isn't a legitimate basis for it in the contract, you shouldn't do it.

And I guess I should also emphasize -- I don't want to lose sight of this fact -- that you're being asked to do it for an unclear purpose. At the end of the day, you may go through the FTC 55-month-style proceeding to set a RAND rate that Microsoft has studiously avoided saying that they're

C E R T I F I C A T E

I, Nancy L. Bauer, CCR, RPR, Court Reporter for the United States District Court in the Western District of Washington at Seattle, do hereby certify that I was present in court during the foregoing matter and reported said proceedings stenographically.

I further certify that thereafter, I have caused said stenographic notes to be transcribed under my direction and that the foregoing pages are a true and accurate transcription to the best of my ability.

Dated this 23rd day of May 2011.

/S/ Nancy L. Bauer

Nancy L. Bauer, CCR, RPR
Official Court Reporter